

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: * Case No. 07-51027
*
MARLYNN RENEE O'NEAL * Adv. No. 08-05031
*
* Akron, Ohio
*
* May 12, 2009
*
UNITED STATES TRUSTEE *
*
V. *
COUNTRYWIDE HOME LOANS, INC. *
* * * * *

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MARILYN SHEA-STONUM
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

DEAN WYMAN, ESQ.
PAUL RANDEL, ESQ.
For Plaintiff, U.S. Trustee

THOMAS CONNOP, ESQ.
ROBERT FOLLAND, ESQ.
For Defendant, Countrywide Home Loans, Inc.

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1 THE CLERK: This United States Bankruptcy
2 Court is now in session, the Honorable Marilyn Shea-
3 Stonum presiding.

4 THE COURT: Please be seated.

5 Good morning. On the docket this morning are
6 final arguments in the trial in the adversary
7 proceeding 08-5031. I'll take appearances of counsel.

8 MR. WYMAN: Good morning, Your Honor. Dean
9 Wyman and Paul Randel representing Daniel M. McDermott,
10 United States Trustee.

11 MR. CONNOP: Your Honor, good morning. Tom
12 Connop and Rob Folland representing Countrywide Home
13 Loans, Inc.

14 THE COURT: And yesterday I inquired of the
15 U.S. Trustee who has the burden of proof whether he
16 wished to -- whether counsel wished to go first or
17 second in final argument and he chose second, so
18 Countrywide is up.

19 MR. CONNOP: Thank you, Your Honor.

20 On several occasions the Court has commented that
21 this is an unusual proceeding and indeed it is. In an
22 unprecedented move, the U.S. Trustee has chosen to sue
23 Countrywide for sanctions and injunctive relief in an
24 adversary proceeding and we'd like to remind the Court
25 the context of this adversary proceeding. It involves

1 a single case, single Chapter 13 case of Ms. Marlynn
2 O'Neal and two pleadings filed in that case, one of
3 which was an objection to the proof of claim, a standby
4 final order. The second was an objection to
5 confirmation that was voluntarily withdrawn.

6 The issue of liability the Court has determined.
7 We are now here on whether or not the United States
8 Trustee has met its burden of proof that a remedy
9 against Countrywide is warranted.

10 There has been no evidence presented in this
11 proceeding that the situation in the Marlynn O'Neal
12 case has happened in any other case in this district or
13 that there is a present threat that it is occurring now
14 or will occur in the future. The U.S. Trustee has
15 proffered into evidence three opinions with the
16 indication that they believe these opinions evidence
17 that monetary sanctions will not adequately deter
18 Countrywide from the conduct in the Marlynn O'Neal
19 case. Those three cases involve the conduct of a
20 property management service and a broker over five
21 years ago that resulted in \$7,500 in sanctions. That's
22 not to excuse the conduct found by the Court, but that
23 is the circumstance presented in the opinion.
24 The second involves unknown conduct of outside counsel
25 which resulted in a show cause order involving a \$1,000

1 sanction, and as Mr. Smith testified, outside counsel
2 didn't inform Countrywide of that circumstance at all.

3 The final case involved the conduct of counsel in
4 multiple cases for multiple mortgage companies and
5 against whom the sanction was imposed. Countrywide was
6 not sanctioned in that case. When extrapolated over
7 the current portfolio of cases handled now by
8 Countrywide, those three opinions constitute 23/10,000
9 of one percent of that portfolio.

10 What the evidence has shown is that completely
11 outside the context of the facts presented in the
12 Marlynn O'Neal case Countrywide has undertaken to
13 improve its bankruptcy servicing practices. These
14 practices have been improved in part to deal with what
15 the Court has noted and I think what is common
16 knowledge around the country in bankruptcy, the
17 unprecedented rise in the number of Chapter 13 cases.
18 Countrywide, as Mr. Smith has testified, has created
19 the office of ombudsman to communicate with counsel for
20 Debtors and try to resolve matters that have escalated
21 beyond the ordinary disputes that occur in the context
22 of the Chapter 13 case. It's created a validation team
23 to review proofs of claim, motions for relief from stay
24 and conduct discharge audits of completion of a Chapter
25 13 case. They participate in National Data Center.

1 They have incurred the cost of joining PACT,
2 technological organizations that better assist
3 Countrywide in accounting for Chapter 13 payments.
4 They've adopted many of the NACTT best practices which
5 are recommended practices. They're not mandated and
6 indeed not all are permitted nationally in Courts
7 around the country, yet Countrywide voluntarily adopted
8 many of those practices.

9 Countrywide has invested in technological
10 enhancements to its system which will further better
11 able it to track Chapter 13 payments. It's expanded
12 its training programs. It has expanded and clarified
13 its policies and procedures.

14 The evidence reflects that Countrywide has
15 committed over three million dollars in expenditures to
16 enhance its bankruptcy servicing. This commitment was
17 voluntary and done of its own initiative.

18 There's also been evidence of an audit
19 commissioned by Countrywide's outside counsel. Over
20 six million dollars has been committed to that process.

21 The U.S. Trustee has proposed as part of the
22 remedy the imposition of a Court-ordered audit of
23 pleadings, proofs of claim filed in this district for a
24 prospective period of a year. Based on the cost
25 incurred by Countrywide to date in this independent

1 audit, the amount that Countrywide would be required to
2 commit is estimated to be between seven and a half and
3 \$15 million based on the current number of loans that
4 it is servicing. This does not include the staging and
5 startup costs which may run as high as three million
6 dollars.

7 The Court has been concerned with the conduct of
8 counsel and its interface with Countrywide leading to
9 the error in filing the proof of claim in Ms. O'Neal's
10 case. The tes --

11 THE COURT: I would simply ask that you
12 respect the liability opinion that I entered. It was
13 not a single error. There was -- there was a parade of
14 errors.

15 MR. CONNOP: I certainly respect Your Honor's
16 opinion.

17 THE COURT: Thank you.

18 MR. CONNOP: We're discussing remedies at
19 this point and I want to point out that the conduct of
20 counsel that the Court was concerned with is not
21 consistent with the practice of Countrywide in dealing
22 with counsel it retains. Countrywide expects
23 communication, responsiveness and accuracy.

24 THE COURT: And I would also ask that you --
25 you think about what the record evidence is in this

1 case and what evidence do I have with respect to the
2 relationship between Countrywide and counsel. I have
3 not been given any evidence of the forms of contracts
4 that are entered into between Countrywide and its
5 counsel, so please, I mean this in all seriousness,
6 please recount for me what evidence we have in the
7 record with respect to the establishment of the
8 attorney/client relationship.

9 MR. CONNOP: Mr. Smith's testimony, Your
10 Honor, un rebutted.

11 The Court having found liability, the U.S. Trustee
12 now seeks mandatory injunction which commands
13 Countrywide to verify all pleadings it files before
14 this Court. It would command Countrywide to employ an
15 auditor who would audit every proof of claim filed in
16 the Northern District of Ohio, among other things, for
17 the next year, and for every case that is filed within
18 the next year. This auditor would, I quote, supervise
19 and review certain verifications or all the
20 verifications that are to be required and would be
21 engaged at Countrywide's expense. This is akin to the
22 appointment of an examiner over a non-Debtor. It is
23 not required by the Code. Indeed it's not permitted by
24 the Code.

25 The third thing is the expansion or the

1 notification of the ombudsman program essentially to
2 every Debtor that files for bankruptcy in the Northern
3 District of Ohio. In the abstract that seems like a
4 reasonable thing to do. The problem in practice is
5 that Countrywide has communicated that to the proper
6 parties, we believe, who can communicate with
7 Countrywide concerning problems. That would be Chapter
8 13 Trustees and counsel for Chapter 13 Debtors. The
9 proposal that the United States Trustee advances, we
10 are concerned, will invite direct communication by
11 Debtors who are represented by counsel who are to look
12 out after their interests as the Court has noted Mr.
13 Whittington did. It will intrude potentially into the
14 ethical obligations that Countrywide must refrain from
15 communicating with people that it knows to be
16 represented by counsel.

17 Your Honor, no Court has presumed to take the
18 action suggested by the United States Trustee. There
19 is no statutory basis for this remedy. There is no
20 equitable basis for this remedy. The remedy exposes
21 Countrywide to an expense ranging from seven and a half
22 million to \$15 million or more. And this is imposed in
23 the context of a single loan in which the error leading
24 to the filing of the proof of claim and the objection
25 were unquestionably a human error, a coding error. No

1 cost was imposed upon the Debtor and no code provision
2 was violated.

3 THE COURT: I want to stop you there, Mr.
4 Connop, because I think there is -- there's a
5 presumption in your argument that distresses me. In a
6 way this is an economic question. Most things in
7 bankruptcy are economic questions. And because
8 Debtor's counsel agree to represent the Debtor for a
9 flat fee, you are arguing that there was no cost to the
10 Debtor. Do you acknowledge that there was a cost to
11 Debtor's counsel?

12 MR. CONNOP: Under Local Rules of this Court,
13 Your Honor, Debtor's counsel is obligated to take the
14 action that he did in responding to this proof of claim
15 and the objection to confirmation.

16 THE COURT: Can you tell me which Local Rule
17 that is?

18 MR. CONNOP: Actually it's the contract that
19 the Court requires that the Debtor's counsel engage in
20 in terms of its -- I believe it's the attorney
21 agreement.

22 THE COURT: Rights and responsibilities. But
23 that -- the Court does not require counsel do that
24 within the flat fee. It just requires that there be an
25 understanding. In this case Mr. Whittington took on a

1 case where there did not appear to be any mortgage
2 issues and he took it on for \$2,000. And, in fact,
3 there weren't any legitimate mortgage issues, but he
4 had to deal with them. He had to deal with mortgage
5 issues and he dealt with them. And do you not
6 recognize that there was an offloading to Debtor's
7 counsel from Countrywide of the expense of
8 Countrywide -- had Countrywide organized its records in
9 a way that this issue was not raised in this case, then
10 there would be no -- Mr. Whittington would not have had
11 to devote the time that he had to devote to this issue.
12 Do you not recognize his lost opportunity cost in this
13 situation?

14 MR. CONNOP: Mr. Whittington had to occur 50
15 minutes of time in responding to the proof of claim and
16 the objection to confirmation and Mr. Whittington is
17 not a party to this proceeding. This is a lawsuit.
18 There's a lawsuit filed by the United States Trustee
19 against Countrywide Home Loans.

20 THE COURT: And what are the issues in the
21 lawsuit?

22 MR. CONNOP: The issues are whether or not
23 Countrywide engaged in bad faith conduct that would
24 abuse the judicial process and justify sanctions.

25 THE COURT: Abuse of process. Abuse of

1 process is one of the issues in this lawsuit.

2 MR. CONNOP: Right. I agree.

3 THE COURT: Thank you.

4 MR. CONNOP: And the authorities that we have
5 cited in connection with the legal standards, we
6 believe, require cost for loss to the Debtor, not to
7 the Debtor's counsel, but to the Debtor. And there
8 wasn't.

9 Now, the standards in this Circuit for the
10 imposition of an injunction are that there be a real
11 and immediate threat of future injury with continuing
12 present adverse effects. We draw Your Honor's
13 attention to the Grendel case, a 2000 case out of the
14 Sixth Circuit, which requires that there be a
15 significant threat of future harm. The Sixth Circuit
16 noted that an injury that has occurred in the past will
17 not support a case or controversy for future relief if
18 unaccompanied by any continuing adverse effects. We
19 believe that the standard set forth in Grendel has not
20 been met by the United States Trustee.

21 I turn next to the general equitable use of
22 Section 105 of the Code and I would ask the Court to
23 consider Norwest Bank of Worthington versus Ahlers, a
24 familiar case out of the United States Supreme Court in
25 1988, which noted in the context of a Chapter 11 case

1 where the Debtor sought to confirm a plan without
2 contributing new value to the matter other than their
3 continued work and efforts in the organizing of the
4 family farm. The Supreme Court noted that whatever
5 equitable powers remain in the Bankruptcy Court must
6 and can only be exercised within the confines of the
7 Bankruptcy Code.

8 The Court has found in its ruling dealing with
9 liability that Countrywide has violated Rule 9011 and
10 Section 105(a). Section 105(a) is not a matter in
11 which obligations are imposed upon a creditor in a
12 case. It enables the Court to utilize that section to
13 enforce other sections of the Code. No Code provision
14 supports the relief that the U.S. Trustee seeks.

15 Apparently, while the U.S. Trustee is no longer
16 seeking or has advanced monetary sanctions
17 specifically, the injunctive relief that they have
18 requested is the functional equivalent. As I've noted,
19 they seek to impose an expense to conduct a hitherto
20 unrecognized audit obligation on a private corporation,
21 the cost of which would exceed certainly \$7.5 million.
22 Your Honor, this is or would be a punitive monetary
23 sanction.

24 Now, there's little question that the economy at
25 large has recognized that there is a troubling

1 situation with the number of defaulted home mortgages.
2 But I would quote from the Ahlers' opinion which
3 recognized as well that in 1988 there was a problem
4 with the economics of the family farm. The Court there
5 said family farms hold a special place in our nation's
6 history and folklore. Respondents and amici paint a
7 grim picture of the problems facing farm families today
8 and present an eloquent appeal for action on their
9 behalf yet relief from current farm woes cannot come
10 from a misconstruction of the applicable bankruptcy
11 laws but rather only from action by Congress.

12 Your Honor, if there is an appropriate remedy for
13 what we submit is a single instance of alleged
14 misconduct, it is for Congress to determine what the
15 remedy would be. We respectfully request that the
16 Court deny the relief requested by the United States
17 Trustee in this matter.

18 THE COURT: Mr. Connop?

19 MR. CONNOP: Yes, Your Honor.

20 THE COURT: Do you not acknowledge that
21 Congress has charged the U.S. Trustee program with the
22 role of watchdog of the bankruptcy process in some
23 ways? And I say this somewhat reluctantly because
24 Bankruptcy Judges have probably a love-hate
25 relationship with the U.S. Trustee program. But do you

1 not acknowledge that Congress has said to the U.S.
2 Trustee program we can't anticipate every problem. The
3 world changes. We need -- we need or we have decided
4 that it is useful, Congress has decided that it's
5 useful to have a program such as the U.S. Trustee
6 program which it's assigned various watchdog
7 responsibilities. And in the exercise of that watchdog
8 role the U.S. Trustee program has said we're concerned,
9 we're very concerned about Countrywide, now BAC,
10 Countrywide, which was appropriately named, operating
11 countrywide, filing all sorts of pleadings in
12 Bankruptcy Courts across the country, that we're
13 concerned that their systems need to produce accurate
14 information on which those pleadings are based. What
15 do you think about that -- about that view of the
16 current statutory landscape?

17 MR. CONNOP: We visited that with Your Honor
18 at the time we filed a motion to dismiss. Your Honor
19 denied that motion. But in direct response to your
20 question, they don't have that power and we've tried
21 that before Judge Crystal in the Southern District of
22 Florida determined that they did not have that power.
23 On Friday we argued the U.S. Trustee's appeal of that
24 decision to the United States District Court for the
25 Southern District of Florida. Most certainly I

1 advocate that they do not have that power. It is not
2 outlined in Section 586(a) of Title 28, the organic
3 statute that created them, nor is it provided in the 28
4 separate Bankruptcy Code sections that deal with United
5 States Trustees' power. Congress was able to empower
6 them to do certain things. This is not one of them.
7 And that I continue to maintain. If Congress had
8 intended the U.S. Trustee to take such actions, to sue
9 private parties, they would have included that in the
10 more than 35 specific statutory authorizations. It is
11 wholly absent. Their watchdog role is one word from
12 legislative history and they cannot find an
13 enforcement mechanism based on one word from
14 legislative history.

15 THE COURT: Well then, what -- what -- what
16 is the appropriate mechanism? Let's -- I'm going to --
17 I'm going to give you a hypothetical. What is the
18 appropriate mechanism, and I'm -- this is a
19 hypothetical.

20 MR. CONNOP: I understand.

21 THE COURT: This is not -- this is not my
22 view necessarily of -- of Countrywide, now BAC. And by
23 the way, I want to come back to that before -- before
24 you sit down. But if there were a situation where the
25 philosophy of an entity that filed lots of claims in

1 bankruptcy was, well, you know, we can just file the
2 claim and then if no one objects, we're golden, and if
3 someone objects, we can withdraw, and they're doing
4 that across the country, how is that problem to be
5 dealt with?

6 MR. CONNOP: Your Honor, mortgage companies
7 are governed by various federal agencies and state
8 agencies that play a role in how their practices are
9 performed. Those include the FTC, State Attorneys
10 General, the Comptroller of the Currency in some cases.
11 Those agencies, those state officers have been
12 empowered either by state law or by federal law to take
13 actions against corporations. The United States
14 Trustee has not.

15 In this hypothetical, if this Court is presented
16 with an improper proof of claim and it is challenged by
17 the Debtor, then certainly this Court has jurisdiction
18 to adjudicate that claim. If it was found to be filed
19 in error, you certainly can take whatever action is
20 permitted by the statutes and rules and case law to
21 adjudicate that. If it is filed in violation of Title
22 28, you can certainly take action against that for
23 intentional misrepresentation.

24 THE COURT: Mr. Connop, look at -- look at
25 the scale which is now confronting Bankruptcy Courts.

1 Look at the scale. When I became a Bankruptcy Judge in
2 1994 there were about 2,000 cases filed in Akron. This
3 year there will be somewhere between six and 7,000
4 cases filed, assuming that the economy doesn't become -
5 - that the bad cold that it has right now doesn't
6 become pneumonia. One can just hope that that's the
7 case.

8 The one-off issue with respect to objections to
9 claims, it is useful. It's very useful. But if there
10 is a systemic issue, are you suggesting that Courts do
11 not have the ability to try to address that in a
12 proactive manner that allows the judicial resources not
13 to be misspent?

14 MR. CONNOP: Your Honor, what we are here on
15 is one case and it concerns me that I believe the Court
16 and the U.S. Trustee are trying many other cases, but
17 they are not before the Court. This is not the vehicle
18 to award the relief that the United States Trustee
19 requests. We are here in a single action adversary
20 proceeding involving a single Chapter 13 case.

21 THE COURT: Well, yesterday Mr. Smith
22 testified initially, without qualification, that BAC
23 had adopted the best practices that came out of this
24 joint task force. Then upon closer inspection of what
25 those best practices were, Mr. Smith said, well, some

1 had been adopted. Some had not. And as you've noted,
2 these are right now voluntary.

3 I am disinclined toward the kind of relief that
4 the U.S. Trustee has requested in terms of after-the-
5 fact audits. If we're going to spend money, I want to
6 see money spent where it can be -- and resources, more
7 importantly, I want to see resources deployed where
8 they can -- where they can cause the most significant
9 positive effect. Mr. Smith's testimony about the
10 training of the bankruptcy technicians at Countrywide
11 really causes me concern.

12 This is framed as a lawsuit. One could hope that
13 everyone in this process is interested in seeing
14 Bankruptcy Court resources deployed in the most
15 efficient and fair manner for all parties concerned.
16 Countrywide has a big stake in seeing the bankruptcy
17 processes operate efficiently and fairly.
18 Countrywide/Bank of America. Bank of America.

19 When I read in the lay press that Bank of America
20 acquired Countrywide I believe after the acqui -- after
21 the filing of this suit, I thought well, you know,
22 one -- again, one can hope that there might be a
23 resolution of this case in which there are no losers.
24 Imagine how terrific I felt yesterday when I was
25 inquiring about whether it would be useful for people

1 to talk and I was told, well, there are talks going on.
2 We just can't tell you amongst whom and why and again,
3 getting back to resources. There's a lot of
4 competition for this particular Judge's attention.

5 Is there any reason to hope that the problems, and
6 there are problems, the problems that exist in the
7 assertion of mortgage holders' claims in Chapter 13 by
8 Countrywide could not be significantly improved through
9 a look at what I describe as the front end, the front
10 end of Countrywide, now BAC's practices perhaps through
11 the lens of that joint task force, the National
12 Association of Chapter 13 Trustees and the National
13 Association of Consumer Bankruptcy Attorneys? Lawyers
14 tend to think of things, particularly litigators, tend
15 to think of things in very adversarial terms. But
16 this -- well, and if you think of it in adversarial
17 terms, then it becomes adversarial.

18 The record in this case suggests that there are
19 still very significant problems at issue. Yesterday
20 Mr. Smith testified with some pride about the fact that
21 there would be adoption of this program that will now
22 allow accounting for pre and post-petition or proper
23 application for pre and post-petition payments and
24 talked about the expense associated with that. That's
25 something that should have happened a decade ago. I

1 welcome it. I think it's wonderful that it's going to
2 perhaps finally appear. But is there not -- is there
3 not something to be gained to have input from other
4 regular players in the system as that's developed?

5 MR. CONNOP: Your Honor, I think any
6 opportunity, voluntary opportunity, to improve the
7 system is useful, and we have presented evidence to the
8 Court that Countrywide has engaged in voluntary
9 improvements to its systems in order to accomplish
10 that. Its representatives participate with the
11 National Association of Chapter 13 Trustees. It's
12 personnel have, as I indicated, worked to modify and
13 improve its procedures. But again, I have to come back
14 to what is before the Court. And the Court is charged
15 and the U.S. Trustee is charged with performing
16 specific duties within the statutory construct of what
17 its powers are and what the Court may do within the
18 confines of a single adversary proceeding. We didn't
19 choose this playing field. The United States Trustee
20 chose to file this lawsuit and it is this lawsuit that
21 we are trying. And I submit, Your Honor, that there
22 has been no evidence to suggest that the remedy sought
23 by the United States Trustee is equivalent to the
24 matter that is before the Court. Thank you.

25 THE COURT: Thank you.

1 MR. WYMAN: May I begin, Your Honor?

2 THE COURT: You may.

3 MR. WYMAN: In January of 2009 an article
4 appeared in the Texas Law Review by Professor Porter.
5 The Court I believe yesterday mentioned Professor
6 Porter, at 87 Texas Law Review 121. And Professor
7 Porter noted as follows, in part. Servicing problems
8 also jeopardize the ability of Courts and Trustees to
9 administer bankruptcy cases correctly and fairly. And
10 Professor Porter continued, if serving -- servicing
11 abuse is routine, this also weakens our collective
12 confidence in the integrity of the bankruptcy system.

13 Against this backdrop this morning the United
14 States Trustee will focus upon three themes in his
15 request for relief.

16 THE COURT: I'm going to welcome that
17 argument but first I want you to address the basic
18 issue of the ability of the U.S. Trustee under the
19 current statutory system to seek the relief that it's
20 seeking in this case.

21 MR. WYMAN: The United States Trustee
22 certainly has broad standing under 307 of the
23 Bankruptcy Code to be heard in any case or proceeding.
24 That standing has been reaffirmed by the Sixth Circuit
25 Court of Appeal certainly as far back as the Revco

1 decision.

2 THE COURT: Now, that's in the main case.

3 MR. WYMAN: Correct. Now, under 28 USC
4 Section 586 there is also broad standing provided to
5 the United States Trustee to supervise and the
6 administration of cases and Trustees in bankruptcy
7 cases. So there is statutory authority for the United
8 States Trustee to seek the relief the United States
9 Trustee is seeking in this case.

10 THE COURT: And can you more specifically
11 point to the provisions in Title 28 on which you rely?

12 MR. WYMAN: Under 28 USC Section 586, in
13 part, each United States Trustee within the region for
14 which the United States Trustee is appointed shall and
15 again, under (a)(3), supervise the administration of
16 cases and Trustees in cases under 7, 11, 12, 13 or 15
17 of Title 11. That is one specific section that would
18 provide authority for the United States Trustee to seek
19 the action that it is seeking in this case, again,
20 along the lines of the broad standing provided to the
21 United States Trustee under the Revco decision, under
22 Section 307 of Title 11.

23 May I continue?

24 THE COURT: Yes.

25 MR. WYMAN: The three themes this morning

1 would be responsibility, verification, notice. And the
2 implementation of these requested remedies in this case
3 will further the goal and objective of the
4 establishment and maintenance of accurate records by
5 Countrywide Home Loans, Inc. and its successor, BAC
6 Home Loans Servicing, LP.

7 The relief requested by the United States Trustee
8 is remedial. The United States Trustee is not
9 requesting that the Court impose any monetary penalty
10 upon Countrywide Home Loans, Inc. or its successor.
11 Rather, the United States Trustee is requesting that
12 the Court exercise its discretion to impose the
13 following remedies. In general, proofs of claim and
14 other Court filings by Countrywide and its successor,
15 BAC Home Loans Servicing, LP, be attested to by a
16 responsible officer of Countrywide or BAC Home Loans
17 Servicing, LP. In general, an audit procedure be
18 implemented under which proofs of claim can be audited
19 in pending Chapter 13 cases in the Northern District of
20 Ohio. The purpose of this audit would be to determine
21 if there are any other cases in which Countrywide has
22 made errors. The time frame for this relief is one
23 year. After a one-year period the United States
24 Trustee requests that a hearing be held to determine if
25 the relief imposed should continue. The parties to

1 this order should be Countrywide Home Loans, Inc.,
2 Countrywide Home Loans Servicing, LP and BAC Home Loans
3 Servicing, LP. BAC Home Loans Servicing, LP should be
4 made a party because it is the successor entity to
5 Countrywide Home Loans, Inc. As set forth in the
6 stipulation, Countrywide Home Loans, Inc. has
7 transferred the servicing rights to loans it previously
8 serviced or it has contracted with BAC Home Loans
9 Servicing, LP to subservice those loans on its behalf.
10 Furthermore, the substance of Mr. Smith's testimony was
11 that future proofs of claim in the Northern District of
12 Ohio would be filed in the name of BAC Home Loans, Inc.
13 for cases in which Countrywide formerly serviced the
14 loans. Mr. Smith did not identify any other entity
15 that would be filing those proofs of claim. In
16 addition, Mr. Smith's testimony reveals that the
17 operations of Countrywide Home Loans, Inc. basically
18 are now being conducted with substantially the same
19 employees and the same records although under a
20 different name.

21 Now, as counsel has indicated and Mr. Smith's
22 testified about an ombudsman program, validation teams,
23 the compliance or adoption of best practices. As set
24 forth in the trial brief of Countrywide, Countrywide is
25 stating that these actions have been taken to improve

1 its processes and the accuracy of its actions in the
2 United States Bankruptcy Court. During his testimony
3 Mr. Smith also indicated that there were some -- some
4 audit procedure applied to the Countrywide records.
5 And as counsel has mentioned and Mr. Smith testified,
6 there was a third-party audit conducted that was
7 commissioned somehow by counsel for Countrywide on some
8 type of nationwide basis.

9 As far as the request that the -- that there be
10 responsibility imposed upon a specific person, the
11 signature requirement sought by the United States
12 Trustee should not impose any undue burden because
13 Countrywide is saying now that members of a validation
14 team take a second look. Mr. Smith kept talking about
15 a second set of eyes are reviewing proofs of claim that
16 are being filed, that are prepared, sent back to the
17 entity for further review and therefore there are
18 individuals then at BAC Home Loans now who are actually
19 preparing and reviewing and validating these proofs of
20 claim. The requirement that a responsible person at
21 Countrywide simply sign those proofs of claim should
22 not impose any undue burden and it provides a sense of
23 assurance, it provides a sense of assurance that the
24 claim that's being presented to the Court, granted if
25 it's being signed and filed by counsel, that it's also

1 verified by someone at Countrywide. It gives -- places
2 responsibility on a specific individual. And again,
3 that was part of the difficulty in the facts during the
4 liability phase where various individuals were simply
5 emailing others asking how can this -- how can this
6 error be corrected. Here, when a specific individual
7 is signing the proof of claim, that would include
8 responsibility.

9 The audit process is also tailored to the relief
10 found by the Court. There certainly are records that
11 are available that could be audited. And again
12 Countrywide has stated that there was some type of
13 similar -- or I won't say similar. There was an audit
14 conducted at some point. I believe the testimony was
15 2008. There are several benefits to the audit process.
16 It will not interfere with the current operations or
17 procedures of Countrywide. It could identify errors
18 and correct them before they become compounded. And if
19 the audit reveals further systemic errors,
20 Countrywide's procedures could be improved.

21 THE COURT: Mr. Wyman, while we're on the
22 topic of audit, you heard my colloquy --

23 MR. WYMAN: Yes, Your Honor.

24 THE COURT: -- with Mr. Connop. In a world
25 of infinite resources the audit might be desirable.

1 That doesn't describe the world in which we live today.
2 I mean the notion that there be an audit to identify
3 future errors, there'll be errors. It's a human
4 process.

5 How do you address the proportionality issue?

6 MR. WYMAN: The -- certainly counsel's made
7 argument as far as the expense that would be involved
8 but there's been no indication of, you know, what --
9 what the expense would be to a Debtor resulting from
10 incorrect proofs of claim or incorrect motions for
11 relief from stay, the quantification for the harm that
12 might befall an individual in Chapter 13 if there are
13 errors that have been or are being committed. So
14 it's -- the proportionality certainly is a valid -- a
15 valid concern.

16 THE COURT: Well, and -- and everybody's
17 always trying to figure out the perfect combination of
18 carrots and sticks. My colleague, Judge Morgenstern-
19 Clarren, has focused I think very usefully on standing
20 issues and did so in a series of hearings on the
21 Court's own motion last summer. And out of that I'm
22 hoping will come very shortly some useful forms that we
23 will probably adopt by local rule which again will
24 focus on trying to diminish what I'll call the garbage
25 in problem. Everybody knows garbage in, garbage out.

1 So that people will focus, people who are filing proofs
2 of claim, servicers often being those -- the entities
3 which are causing the filing of proofs of claim and
4 legitimately filing proofs of claim, someone out there
5 has real rights that ought to be protected. The
6 question -- the question that -- one of the questions
7 that Judge Morgenstern-Clarren was focusing on was, you
8 know, is there any bear there? Is there any client
9 who's actually requesting that the things that are
10 happening in the Court should happen in the Court.
11 That was not an issue on which the plaintiff in this
12 case chose to focus. But is there not another route
13 that again, assuming that there's only -- there's only
14 so many dollars to be spent to cause correct
15 information to arrive at the docket, would it not be
16 more appropriate to address these issues through, as we
17 have done for a dozen years in the relief from stay
18 context, to say okay, Movant, please provide this basic
19 information and provide it in this format so that
20 judges who are dealing with hundreds of proofs of claim
21 a month can easily access that information. With
22 respect to proofs of claim having to do with mortgages,
23 a form that identifies who the claimant is in relation
24 to this bundle of legal rights, is it a servicer? If
25 so, is the servicer functioning in an agent's role? Is

1 it functioning, you know, does the servicer, in fact,
2 have a monetary stake? Some servicers apparently do.
3 Some servicers are contractually obligated to advance
4 payments to their trustee customer even if they haven't
5 received the payments which again is beyond the scope
6 of anything that was in this record but, you know,
7 wanting to know who, you know, who it is whose rights
8 are trying to be vindicated. You know, who has the
9 rights? What are the rights? That's a very important
10 issue.

11 Would we not -- would we not be better off making
12 it very clear what information we expect and then just
13 making it very clear that if that information isn't
14 provided, appropriate relief may be obtained upon
15 objection.

16 MR. WYMAN: The -- if I might? The
17 alternatives we are presenting, these alternatives for
18 the Court's consideration.

19 THE COURT: Mm-hmm.

20 MR. WYMAN: The first alternative is similar
21 to a possibility that the Court may be suggesting. I'm
22 not quite clear. But the -- the request for
23 verification by someone at Countrywide would include
24 that Countrywide is a creditor or services or servicer
25 with authority to file the claim. That -- that would

1 be similar to having a form saying --

2 THE COURT: Right.

3 MR. WYMAN: -- we are the servicer. Here's
4 our assignment. Here's the note.

5 THE COURT: Right.

6 MR. WYMAN: So it's similar. The specific
7 mechanism by which the relief would be imposed is
8 certainly up to the discretion of the Court. The
9 substance of it would be though that there's the
10 verification and the clear information that would show
11 generally that everything is accurate and correct.
12 That's the entire point.

13 THE COURT: I'm probably going to have a
14 little more colloquy although I've got an eleven
15 o'clock. No, it's an 11:30 hearing so -- because
16 there's one issue I want to return to with Mr. Connop
17 as well.

18 But the thing -- the point that -- on which the
19 U.S. Trustee probably has caused the greatest concern
20 to this Court is the systemic practice, and I believe
21 it has been established to be the systemic practice of
22 Countrywide to have outside counsel file -- sign proofs
23 of claim. And there's a scary legend on the proof of
24 claim form that's almost never in force and that's,
25 again, an issue of resources. But the issue of having

1 outside counsel who has access to whatever
2 documentation has been put on a particular web site and
3 in theory has the right to ask the client for more
4 information, but how do you know what questions to ask.
5 That is a -- that is problematic to me because I don't
6 think that Countrywide is asking their counsel to go
7 out and do a lot of due diligence and come back and ask
8 questions about -- about the particular proof of claim.
9 They want the proof of claim filed. They want it filed
10 quickly. And -- and I -- I have -- I have a lot of
11 sympathy for your argument that, okay, well then let's
12 have somebody -- whoever's signing that proof of claim,
13 let's have them have access to the documents. And
14 there's no requirement, there's the opposite of a
15 requirement that the proof of claim be signed by a
16 lawyer. It should be signed by someone who has
17 knowledge of the claim. I am sympathetic to that.
18 And, you know, but you talk in terms of verification by
19 Countrywide. I mean isn't it just -- I mean when the
20 person -- whoever's signing that form, they're -- isn't
21 that signature verification?

22 MR. WYMAN: Yes, Your Honor.

23 THE COURT: So, I mean, in an already
24 complicated system we don't need to add more layers of
25 complication. I mean is your request really that the

1 Countrywide practice of having outside counsel sign
2 proofs of claim be called out as a dangerous practice
3 and if they proceed with it they proceed at their own
4 risk?

5 MR. WYMAN: The United States Trustee
6 wouldn't frame it that way. It's simply that the
7 current practice should be changed to have someone else
8 sign. If the lawyer's going to sign the proof of
9 claim, someone else should also be verifying that proof
10 of claim again for the one-year period because based on
11 these Court's findings about the status of the
12 Countrywide system. So -- but I wouldn't say it's at
13 their own risk because the danger, of course, is if
14 there's another proof of claim that's incorrect,
15 someone could be harmed by it and so --

16 THE COURT: What I'm saying though is that,
17 you know, you're asking for relief.

18 MR. WYMAN: Yes, Your Honor.

19 THE COURT: And the relief needs to be
20 clearly articulated. If it's ordered, it needs to be
21 clearly articulated so there can be compliance. Okay,
22 state for me what I would call the most elegant, in a
23 mathematical sense, the most elegant relief that
24 addresses the signature on the proof of claim.

25 MR. WYMAN: With leave of Court may I simply

1 repeat what the U.S. Trustee stated in his brief?

2 THE COURT: You can if you think that's the
3 best answer.

4 MR. WYMAN: All proofs of claim filed by
5 Countrywide or its successor, BAC Home Loans Services
6 or Servicing, LP, in the United States Bankruptcy Court
7 for the Northern District of Ohio shall include a
8 detailed itemization of payments and credits as a
9 running account and shall be accompanied by a verified
10 statement from a responsible officer with access to the
11 entire account history attesting to the following: A,
12 Countrywide is a creditor or servicer for a creditor of
13 the Debtor with authority to file the claim.
14 Countrywide has audited the Debtor's loan history. Any
15 alleged prepetition arrearage is authorized by the
16 operative loan documents and there's factual support.
17 And any alleged charges, costs or fees are separately
18 itemized, authorized by the operative loan documents,
19 have a basis in fact and are reasonably necessary.
20 Also, all requests, objections and pleadings filed by
21 Countrywide in the United States Bankruptcy Court for
22 the Northern District of Ohio, including but not
23 limited to motions for relief --
24 THE COURT: I want to just stick right now
25 with the proof claim.

1 MR. WYMAN: Okay.

2 THE COURT: You know, the proof of claim is
3 quite separate from the pleadings. Pleadings have to
4 be signed by a lawyer.

5 MR. WYMAN: Yes, Your Honor.

6 THE COURT: But let's -- let's stick with the
7 proof of claim. So you talk about an officer. You
8 don't -- you don't believe that the -- the Bankruptcy
9 Rules allow a corporation such as Countrywide, now BAC,
10 to have an employee who does not have an officer title
11 to sign the proof of claim?

12 MR. WYMAN: No. That is entirely
13 permissible, Your Honor.

14 THE COURT: Okay. So the word officer,
15 you're not -- that's not a line in the sand for you?

16 MR. WYMAN: Correct.

17 THE COURT: It's an informed individual?

18 MR. WYMAN: Correct. An employee who has
19 knowledge, who can bind basically the corporation. It
20 shouldn't be the line technician who's simply looking
21 at the information. It should be someone who has
22 authority and knowledge about the actual filing. I'm
23 not saying the line technician doesn't, but it should
24 be someone who's reviewed it, who has a responsible
25 position who can say yes, this is accurate.

1 THE COURT: Well, you want -- you want
2 whoever is signing the form to have thoughtfully gone
3 through a checklist of information and provided it?

4 MR. WYMAN: That's correct, Your Honor. And
5 that that person have personal knowledge based on that
6 review.

7 THE COURT: Please proceed.

8 MR. WYMAN: The -- may I go to the pleading
9 section, Your Honor?

10 THE COURT: Absolutely. If that's where you
11 want to go.

12 MR. WYMAN: All objections and pleadings
13 filed by Countrywide in the United States Bankruptcy
14 Court for the Northern District of Ohio, including but
15 not limited to motions for relief from stay and
16 objections to confirmation of Chapter 13 plans, shall
17 include a verification from a responsible officer with
18 access to the entire account history attesting that
19 Countrywide is a creditor or servicer for a creditor of
20 the Debtor with authority to file the pleading,
21 Countrywide has audited the Debtor's loan history, any
22 alleged prepetition arrearage authorized by the
23 operative loan documents and its factual support and
24 that the facts in the pleading are accurate.

25 THE COURT: And so is it fair to characterize

1 that as whoever would be signing this pleading would
2 have access to the due diligence that would have been
3 done by whoever signed the proof of claim?

4 MR. WYMAN: Yes, Your Honor. Yes. These are
5 corollary suggestions to the Court that again the point
6 is that some responsible person with personal knowledge
7 after reviewing the information would be verifying to
8 the Court that the information is accurate.

9 THE COURT: Please proceed.

10 MR. WYMAN: Thank you. The third element is
11 the one of notice and that simply goes to the ombudsman
12 program that Mr. Smith testified about and that this
13 simply be notified and notice be provided to Debtors
14 and Debtor's counsel about the existence of the program
15 through some Court pleadings.

16 THE COURT: Well, okay, now Mr. Connop has my
17 sympathy in terms of the issue of communication. At
18 least to some extent he has it.

19 The issue of communication with a represented
20 individual, that -- that pertains to counsel not
21 communicating with a represented individual but in the
22 Northern District of Ohio we have worked very hard to
23 try and educate folks that it's just really not a good
24 idea to try and represent oneself in bankruptcy. We
25 have a very low pro se filing level. So most of our

1 Debtors are represented by counsel and most often
2 counsel are able to have the most efficient
3 conversation. Again, efficiency matters a lot in this
4 area and perhaps it's ironic that I'm talking about
5 efficiency as we sort of drill into these issues but
6 these are important issues. But I -- but I know from
7 my own Chapter 13 dockets the desire that people have
8 to talk about their problems, to talk about them hoping
9 for a miracle. And so I understand -- I understand
10 that Countrywide may have a very legitimate interest in
11 not having its ombudsman's lines further backed up by
12 people who don't -- they really haven't formulated an
13 issue. They really don't -- you know, it's just like,
14 well, I can call this number. If the information about
15 the ombudsman is known to Chapter 13 Trustees and is
16 known to Debtor's counsel, please do the cost benefit
17 analysis for me about why extending it to Debtors is
18 appropriate.

19 MR. WYMAN: The purpose of course would be to
20 resolve disputes. Now, if there is a concern that this
21 may somehow violate the attorney-client relationship
22 because a Debtor who's represented by counsel is
23 calling Countrywide, we agree with that. And
24 therefore, the relief for those Debtors who are
25 represented by counsel we would agree that there

1 shouldn't be a mechanism in place that is designed to
2 interfere with that attorney-client relationship.
3 However, we would request a mechanism that makes sure
4 that Debtor's counsel is informed about the existence
5 of the ombudsman's office, that they at least would
6 know how to contact the ombudsman's office and be
7 provided that information. And a Court filing listing
8 that would seem to be an efficient mechanism.

9 THE COURT: And again, is this -- is an
10 adversary proceeding imposing that requirement on one
11 servicer in one district the more -- the appropriate
12 way to address this issue or is this something which is
13 more appropriately addressed for all -- for all
14 servicers? And I don't know whether all servicers have
15 an ombudsman program

16 MR. WYMAN: The United -- I do not personally
17 know of but I haven't looked into the issue of
18 ombudsman programs for anyone other than Countrywide so
19 I can't comment on whether there are or not other
20 similar programs. But I would say that the general
21 concept would appear to be valid in this case because
22 it would provide another check, another mechanism to
23 ensure that any possible errors are corrected and that
24 is the purpose for the request. I do not have
25 information on the cost or benefit of this notification

1 process.

2 THE COURT: Well, and the ombudsman pro -- I
3 mean ombudsman, again, we all -- we all have our own
4 received information about what -- what a label means
5 and the record is quite thin about this -- the
6 ombudsman program at Countrywide. But there really --
7 generally, ombudsman programs are meant to address kind
8 of the out of the ordinary problem, not the ordinary
9 problem. The ordinary problem should be channeled
10 through the regular re -- the regular resolution
11 channels; true or not?

12 MR. WYMAN: The -- the evidence here at the
13 liability phase was that the normal channels didn't
14 work and that is the reason for the request for
15 notification of the ombudsman's program, because based
16 on this Court's findings.

17 THE COURT: Please proceed.

18 MR. WYMAN: Generally, the relief requested
19 by the United States Trustee, again at the discretion
20 of Court, would be for a one-year period subject to a
21 further hearing in one year to look at the issues again
22 to see whether the procedures, if the Court orders
23 procedures, should continue.

24 THE COURT: Well, let me ask you, Mr. Wyman,
25 you know, again there's not a lot of, you know, there

1 was kind of sketchy evidence. But audits? They're
2 not -- they're not without transaction costs.

3 It seems to me that there -- again, that the U.S.
4 Trustee chose the scope of the evidence and this is a -
5 - it's a single case with a Debtor who unfortunately
6 died, didn't complete the plan and shouldn't have had
7 these issues raised in her case but they are -- this
8 case in many ways it's so far from, quote, typical.

9 If the Court were to grant relief with respect to
10 the signature issue with respect to the proof of claim
11 form, with -- part of the problem conceptually is we
12 have this legal system which has its own one-off
13 sanctions, or maybe not. You know, the -- I've
14 expressed my views in Wingerter about the applicability
15 of Rule 9011 to the proof of claim process. That
16 proposition is more controversial than I would have
17 imagined but it has its controversies. But again, you
18 know, we have a kind of crazy quilt because we have --
19 again we have this proof of claim form with this legend
20 that, you know, was scary enough when the fine was
21 \$5,000 and now it's been upped, but where's the
22 enforcement if there's a -- if there's an incorrect or
23 whatnot, incorrect -- incorrect is -- incorrect happens
24 in human activity. False, there's a false claim,
25 where, you know, where do we see the enforcement. We

1 don't see a lot of it because you have limited
2 resources. But if there is a mechanism put in place
3 directing that the defendant -- proofs of claim by the
4 defendant must meet the criteria that you spelled out
5 which is really saying you must comply with the -- with
6 the existing requirements for filing a proof of claim
7 and announcing relief, one-off relief which is really
8 how the legal system works, one-off relief if that
9 doesn't happen. Is that a way -- is that a way to go
10 in this case? When I say one-off, a case by case, you
11 know. If -- and of course the frustration for
12 Bankruptcy Courts is we're seeing -- we're seeing a
13 kind of whatever, you know, that I found my proof of
14 claim. It's deemed -- it's deemed allowed unless
15 someone objects. The onus is on someone else to
16 object. If my information's not correct, whatever.
17 That's not a healthy system. And the question is how,
18 you know, how do we -- how do we most appropriately
19 within the legal system get over the whatever attitude.

20 MR. WYMAN: And the request -- the point of
21 the request is to have someone, not only the lawyer,
22 but someone at BAC --

23 THE COURT: Right.

24 MR. WYMAN: -- review it and sign it so
25 there's responsibility.

1 THE COURT: And I'm with you there. Then
2 okay. So they do that. Is that enough relief? And
3 then we see what -- we see where that takes -- that
4 takes the system in terms of dealing with the onslaught
5 of mortgage claims that will be filed. I mean it's a
6 tsunami.

7 Your concern is you want -- you want a mechanism
8 to tell you that that's working. You want the audit
9 mechanism. But that's an expensive -- it's an
10 expensive mechanism. And tell me how on the facts, on
11 the evidence in this case it's justified.

12 MR. WYMAN: Well, the -- certainly the -- the
13 information that was on the proof of claim was
14 completely incorrect. Had there been an audit done or
15 an audit procedure, all the information would have been
16 reviewed. Certainly the notes would have been reviewed
17 and the error may not have occurred.

18 THE COURT: Right. But how does that then
19 get to -- how -- how does that -- give me one case that
20 would support the scope of the audit you're seeking
21 based upon that kind of evidentiary record.

22 MR. WYMAN: The -- the only case that is
23 somewhat analogous was the case in a footnote in
24 response to the U.S. Trustee's brief. I believe it's
25 the Galley case. And that's -- I say it's analogous.

1 It's not directly on point. It's just somewhat
2 similar. And an order was entered in that case by
3 consent, not -- not by directive. And that was a case
4 in the District Bankruptcy Court in Massachusetts and
5 that arose out of the Capital One litigation where the
6 United States Trustee had filed a complaint alleging
7 that there were violations of the discharge injunction
8 by Capital One. And as far as the voluntary consent
9 resolution of that case, there was an agreed order
10 entered which provided some type of audit mechanism of
11 proofs of claim filed by Capital One. That -- and that
12 is Case No. Adversary Action 08-1272 in re Galley,
13 November 20th, 2008. That -- that is the only case of
14 which I'm aware that is somewhat similar. There's
15 another case out of Louisiana dealing with accounting
16 procedures for proofs of claim. But as far as the
17 audit procedure, that is the only case of which I'm
18 aware but I have to caution that with by consent --

19 THE COURT: So it really is -- it really is
20 same but very different?

21 MR. WYMAN: Well --

22 THE COURT: Or similar but very different.

23 MR. WYMAN: I mean it's similar but I'm just
24 saying -- but the theory was the same. The theory was
25 to verify that there was accuracy or that the proofs of

1 claim were properly filed.

2 THE COURT: Let me let you wrap up then
3 without further interruption and then I want -- I want
4 to return to Mr. Connop very briefly.

5 MR. WYMAN: The United States Trustee again
6 requests that the Court, at its discretion, enter
7 appropriate relief. And the U.S. Trustee has nothing
8 further to say.

9 THE COURT: Thank you. Mr. Connop, I do want
10 to understand the stipulation that has been filed.
11 Bank of America acquired Countrywide, I believe, after
12 this litigation was filed. Countrywide continued to
13 operate for a period of time as a subsidiary and I now
14 understand that something has changed. Were the Court
15 to order any kind of relief with respect to ongoing
16 operations of what had been Countrywide, who is the
17 party defendant right now?

18 MR. CONNOP: Your Honor, Countrywide Home
19 Loans, Inc. is the party defendant.

20 THE COURT: And what is Countrywide Home
21 Loan -- has Countrywide Home Loans, however, just
22 shifted everything it's doing over to a limited
23 partnership and so any relief that I were to order that
24 would be prospective would be without meaning.

25 MR. CONNOP: Your Honor, the -- we've

1 endeavored as part of the stipulation to accurately,
2 and I think we did, describe the accuracy with accuracy
3 the manner in which the servicing operations of
4 Countrywide Home Loans, Inc. have been transferred
5 post-acquisition. As we indicated, there is a sub-
6 servicing relationship, as I understand it, with BAC
7 Home Loans Servicing, LP, which is the former
8 Countrywide Home Loans Servicing, LP.

9 THE COURT: So Countrywide, the named
10 defendant, still has the servicing rights but it has --
11 it has contracted with an affiliate to further provide
12 that servicing. They're providing their -- their
13 customers with the service by subcontracting to an
14 affiliate is what you're saying?

15 MR. CONNOP: Your Honor, I don't want to
16 overstate the situation because -- well, I'm not under
17 oath and I don't want to misrepresent anything to the
18 Court. Some servicing rights to some loans are held by
19 Countrywide Home Loans -- or I should say at the time
20 of the filing of the lawsuit some servicing rights
21 relating to other loans are held by Countrywide Home
22 Loans Servicing, LP. It is my understanding that the
23 two entities had subservicing agreements, so one could
24 service loans for the other. The operational
25 mechanism, as I understand it for both companies was

1 the same. They used the same computer systems. But
2 the effect of the transactions that occurred subsequent
3 to the O'Neal lawsuit resulted in Countrywide Home
4 Loans being a subsidiary, I hope I state this right, of
5 Bank of America NA.

6 THE COURT: Do you see a little bit of irony
7 here? I mean, you know, we're always hearing when we,
8 you know, at our CLE programs about how Debtors don't
9 even know who they're dealing with. You know, their
10 mortgage has been assigned and assigned and assigned
11 and they're trying to figure out who they should send
12 their checks to. Do you have any sympathy for this
13 Bankruptcy Judge feeling a little bit like, you know --
14 I, you know, this -- I have no illusions that this was
15 done because of some lawsuit in Akron, Ohio. But
16 please at this point tell me if I were to issue relief
17 having to do with the signature on the proof of claims
18 filed by Countrywide and entities now -- there was a
19 portfolio of 130,000 mortgages that Countrywide had
20 been addressing; is that correct?

21 MR. CONNOP: Your Honor, at present it is my
22 understanding that BAC Home Loans Servicing services
23 approximately 130,000 loans in bankruptcy nationwide.

24 THE COURT: And is BAC Home Loans Servicing,
25 LP the successor to Countrywide Home Loans?

1 MR. CONNOP: I think as a matter of law it is
2 not the successor to Countrywide Home Loans.

3 THE COURT: Okay.

4 MR. CONNOP: It is Countrywide Home Loans
5 Servicing, LP by change of name. It is my -- it is my
6 understanding and I think it's reflected in the
7 stipulation that servicing rights for home loans have
8 been assigned, and the stipulation speaks for itself,
9 please understand, have been assigned under a sub-
10 servicing agreement to BAC Home Loans Servicing, LP.
11 And, Your Honor, with all sincerity, in response to
12 Your Honor's question, I hope -- Rule 65 will govern to
13 whom the Court directs that this injunction, should it
14 be entered, applies. I cannot bind BAC Home Loans
15 Servicing, LP. They are not my client. Nor can I bind
16 Bank of America, NA. I represent before Your Honor
17 Countrywide Home Loans, Inc.

18 THE COURT: On that topic I'll hear from the
19 U.S. Trustee.

20 MR. WYMAN: Mr. Smith testified basically
21 that going forward proofs of claim would be filed by
22 and on behalf of BAC Home Loans Servicing, LP for the
23 former Countrywide Home Loans loans. So the agreement
24 that Countrywide had to service loans, that agreement,
25 under the stipulation, is transferred to BAC Home Loans

1 Servicing, LP, and therefore, any relief that this
2 Court may enter, the U.S. Trustee would request apply
3 to and bind BAC Home Loans Servicing, LP because BAC
4 Home Loans Servicing, LP is in privity to Countrywide
5 Home Loans, Inc. regarding the servicing of these
6 loans.

7 THE COURT: And so how do you respond to Mr.
8 Connop's statement that his client is the named
9 defendant in this litigation and there's been no -- if
10 this change in the internal organization of various
11 BoFA subsidiaries happened after -- or at least was
12 announced to the public after the liability hearing,
13 reading the stipulation do you think that this Court
14 can enter meaningful relief in this litigation.

15 MR. WYMAN: Yes, because the stipulation
16 provides that the servicing rights have been assigned
17 or transferred to BAC Home Loans Servicing, LP and
18 therefore any relief that could be or may be imposed
19 against Countrywide may also be imposed against its
20 privities. And that, in conjunction with Mr. Smith's
21 testimony that going forward the proofs of claim for
22 these services loans will be in the name of BAC Home
23 Loans Servicing, Inc., does provide authority to enter
24 relief as to Countrywide Home Loans, Inc. as well as
25 BAC Home Loans Servicing, LP.

1 THE COURT: So it would be with respect to
2 those entities with whom the named defendant had
3 servicing arrangements which it has now subcontracted
4 to its affiliate?

5 MR. WYMAN: That is correct. The United
6 States Trustee is not requesting that any relief be
7 granted against BAC Home Loans Servicing, Inc. for any
8 loans other than the ones it's servicing through a
9 contractual arrangement with the Countrywide Home
10 Loans, Inc. entity. So in other words, if BAC Home
11 Loans Servicing, Inc. is servicing loans on behalf of
12 someone else apart from the existing Countrywide Home
13 Loans Servicing, Inc. portfolio, the United States
14 Trustee is not requesting that relief. It's simply
15 those loans that it's servicing under an agreement with
16 Countrywide Home Loans, Inc.

17 THE COURT: One more -- one more question
18 with respect to remedies. You've asked for an auditor.
19 Would a lesser-included form of relief be a designated
20 organization or entity that would receive complaints
21 about the failure of the named defendant and its
22 privities to abide any Court order -- any injunction
23 that the Court were to issue? With -- with the
24 reporting out from that person or entity in six months
25 to determine whether that -- that's a fully effective

1 form of relief.

2 MR. WYMAN: The United States Trustee would
3 have no objection to that form of relief but the United
4 States Trustee would not view that as a substitute for
5 the relief the United States Trustee's requesting.

6 THE COURT: Let me hear from Mr. Connop on
7 that issue.

8 MR. CONNOP: Yes, Your Honor?

9 THE COURT: You know, as I said in the
10 colloquy, I have sympathy for the notion that audits
11 are expensive and not nearly as effective as one would
12 hope that they could be. Do you believe that your
13 client would be deprived of due process if the Court
14 were to put in place a reporting mechanism should
15 anybody feel that whatever injunctive relief the Court
16 might have ordered were not being fully provided?

17 MR. CONNOP: Your Honor, I haven't analyzed
18 it in the context of the constitutional due process
19 issue. I do believe that such an order would be
20 outside the Court's jurisdiction to enter, and to that
21 extent, whether it -- I guess that carries with it an
22 implication --

23 THE COURT: Why is it outside of my
24 jurisdiction to order?

25 MR. CONNOP: Because it's not within your

1 jurisdiction as an Article 1 Court to do so. It is a
2 punitive form of relief. No portion of the Bankruptcy
3 Code authorizes the imposition of that injunctive
4 relief and I think --

5 THE COURT: Article 1 Judges cannot -- cannot
6 take action to avoid abuse of process?

7 MR. CONNOP: Article 1 Judges can impose
8 sanctions to coerce compliance with an outstanding
9 Court order or to compensate a party injured by another
10 person's conduct. This does not fall within that
11 category of relief that is available to an Article 1
12 Judge.

13 THE COURT: I appreciate your thoughts on
14 that.

15 All right. With that I believe we are concluded.
16 I'll take the matter under advisement and thank you all
17 for interesting issues.

18 (END OF PROCEEDINGS)
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1 State of Ohio)

2 Cuyahoga County)

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CERTIFICATE

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9 I, Marc Eppler, a Notary Public, within and for the
10 State of Ohio, do hereby certify that the above
11 transcript is a true and accurate record of the hearing
12 held before the HONORABLE MARILYN SHEA-STONUM. This
13 record was prepared from an audio recording provided by
14 the Court.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal of office in Cleveland, Ohio on this 22nd day of
17 MAY, A.D., 2009.

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Marc Eppler

MARC EPPLER

Notary Public - State of Ohio
my commission expires 9-14-2013



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